



# Wrap-up of Sydney Arbitration Week 2014

Over five days in November, Sydney played host to a series of major international conferences as part of the second Sydney Arbitration Week. Allens actively participated in these events with our lawyers speaking and presenting at, and moderating, a variety of sessions, and our Sydney office hosting the Young ICCA International Arbitration Skills Workshop. The conference is an important event on the arbitration calendar and is a good opportunity for local and international participants to meet and discuss the current issues in arbitration practice. The Allens Arbitration group reports on some highlights from the week.

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## 2nd Annual GAR Live Sydney Conference – 11 November 2014

The Global Arbitration Review's GAR Live Sydney conference was held on Tuesday, 11 November. The conference was attended by a diverse mix of arbitrators, representatives from arbitral institutions, legal practitioners and clients, with active participation in the interactive sessions throughout the day.

His Honour Chief Justice Allsop of the Federal Court of Australia kicked off proceedings with a keynote speech addressing 'International commercial arbitration – the courts and the Rule of Law in the Asia Pacific Region'. His Honour observed that countries across the region who have adopted the UNCITRAL Model Law, including Australia, have encouraged the creation of regional jurisprudence and are becoming less reliant on English authorities. He discussed the development of case law regarding public policy in the region and emphasised that a reputation of fairness is at the heart of acceptance of the arbitral process. Finally, his Honour spoke of the increased contact between courts in the region and a resulting development of skill and knowledge. He predicted great demand for commercial dispute resolution in the Asia Pacific region in the coming decades.

Following a panel discussion on the lessons from Australia and New Zealand of improving efficiency in international arbitration, Andrea Martignoni, Partner leading the Allens International Arbitration Group in Sydney, participated in a panel session discussing strategic considerations in selecting and appointing arbitrators. Joining Andrea during the sessions were representatives from the Singapore and Hong Kong International Arbitration Centres (John Savage and Ruth Stackpool-Moore), and Michael Hwang SC was the moderator. The panel canvassed a wide range of considerations for parties and their legal counsel to take into account when making what was described during the session as perhaps the most important step in any arbitration. Andrea emphasised the importance of choosing a party-appointed arbitrator with the reputation and gravitas to carry weight in the arbitral tribunal's deliberations.

GAR Live Sydney was then capped off by an engaging Oxford Union-style debate considering whether '*International arbitration is not arbitration if there is an appeal*'. Allens Senior Associate Jim Morrison moderated two teams that vigorously sought to convince the judges and the audience of their competing definitions of 'appeal' and the role that national courts should or should not play in reviewing arbitral awards. In the end, the judges (led by her Honour Justice Patricia Bergin of the NSW Supreme Court) found against the motion, including on the basis that the importance of party autonomy in arbitration extends to allowing the parties to

agree to an appeal process if they wish. Somewhat ironically, the team arguing against appeals in international arbitration then appealed the decision to the audience who overwhelmingly sided with the judges.

### Clayton Utz and University of Sydney International Arbitration Lecture – 11 November 2014

Following GAR Live Sydney, the 13th International Arbitration Lecture organised by Clayton Utz and the University of Sydney was held at the Federal Court. The lecturer this year was Michael Hwang SC, a well-known arbitrator, former judge of the Supreme Court of Singapore and Chief Justice of the Dubai International Financial Centre (**DIFC**). He spoke on the topic '*Commercial Courts and International Arbitration – Competitors or Partners*', examining different legal perspectives on the relationship between commercial courts and arbitral tribunals, as well as reflecting upon the legitimacy of the arbitral process. In doing so, Mr Hwang discussed the Singapore International Commercial Court (**SICC**), which will be launched in January 2015 to hear international commercial and offshore cases, the London Commercial Court (**LCC**) and the DIFC Courts. He considered the likely impact of the SICC on the work and reach of the Singapore International Arbitration Centre (**SIAC**) and concluded that SIAC and the SICC will not be competing players in a zero-sum game, pointing to the increasing caseload of the LCC alongside the strong and steady growth of the London arbitration market as an example.

Mr Hwang also presented the new draft Practice Direction of the DIFC Courts, which is aimed at facilitating the enforcement of judgments in jurisdictions outside the United Arab Emirates by capitalising on the relative ease of enforcement of arbitral awards under the New York Convention. According to the draft Practice Direction, provided certain criteria are fulfilled, the parties can agree that any dispute arising out of, or in connection with, the enforcement of any judgment of the DIFC Courts will be referred to and resolved by the DIFC-LCIA Arbitration Centre. Mr Hwang explained that, in the event of difficulties in enforcing a judgment of the DIFC Courts, the effect of such an agreement would be to convert it into a DIFC-LCIA arbitral award that could be enforced more easily outside the UAE under the New York Convention. The consultation process on the draft Practice Direction closed on 6 August 2014 and it is expected that the final wording of Direction will be published in the coming months.

## ACICA and Business Law Section of the Law Council of Australia International Arbitration Conference 2014 – 13 November 2014

The next major event during Sydney Arbitration Week 2014 was hosted by the Australian Centre for Commercial Arbitration (**ACICA**) and the Business Law Section of the Law Council of Australia, which addressed '*Burning issues in international arbitration – an Asia-Pacific perspective*'. The Chief Justice of the NSW Supreme Court, Tom Bathurst QC, launched the day's events by addressing the particular needs of parties in the Asia-Pacific region, including in light of cultural considerations. The sessions that followed assembled a truly international cast of speakers, including arbitrators, judges, academics, arbitral institutions and practitioners from Australia as well as Korea, Switzerland, Malaysia, Hong Kong, New Zealand, the Netherlands, Canada, China and Singapore.

The discussion over the course of the day focused on a wide range of topics relevant to our region, including whether 'best practices' in international arbitration are an excuse for avoiding reform; issues in training and educating arbitrators and practitioners and the role of academic and professional accreditation; the status of combining dispute resolution process, such as arbitration and mediation, in the region; and a 'looking glass' view on investor-state arbitration and possible developments over the next decade. Allens Partner Andrea Martignoni moderated a lively panel, which tackled recent developments in obtaining interim relief in the context of international arbitrations. The relationship between arbitration and national courts was again a focus of discussion, as well as the relatively recent proliferation of emergency arbitrators in institutional arbitral rules and the opportunities and challenges presented by this innovation.

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## Young ICCA International Arbitration Skills Workshop – 14 November 2014

At the conclusion of Sydney Arbitration Week 2014, Allens' Sydney office hosted the Young ICCA International Arbitration Skills Workshop. The event, which has been held on more than 30 occasions around the world, adopts an interactive format where experienced younger practitioners lead a roundtable discussion on more practical issues in arbitration. This was the second time that this event has been held in Sydney and, like the previous occasion, it attracted a full house.

The theme this year was '*Commencing international arbitrations – trouble-shooting pathological clauses and other problems*'. The workshop brought together arbitration lawyers from across Australia to discuss some common and not so common issues that can arise in the drafting and enforcement of dispute resolution clauses. The workshop commenced with Julia Dreosti of Lipman Karas providing an overview of important considerations when drafting dispute resolution clauses, ranging from choice of seat through to interim measures. These issues were further explored and given some practical application in a mock scenario led by Duncan Watson of Quinn Emanuel and Ruth Stackpool-Moore of the Hong Kong International Arbitration Centre, which related to a joint-venture transaction between Australian and Chinese parties consisting of multiple related contracts and containing a number of pathological dispute resolution clauses. A second mock scenario, led by Chester Brown of the University of Sydney, focused on a hypothetical investment by an Australian party in an Indonesian coal mine and the implications of expropriation in terms of potential dispute resolution procedures under an investment treaty and in commercial arbitration proceedings.

The relaxed environment of the workshop, which was moderated by Jim Morrison of Allens, who is a Co-Chair of Young ICCA, contributed to some insightful and colourful exchanges by participants.

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